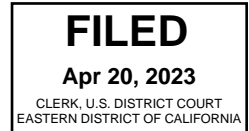


## UNITED STATES DISTRICT COURT

for the  
Eastern District of California

In the Matter of the Search of  
*(Briefly describe the property to be searched  
 or identify the person by name and address)*  
 eBay Account "RODREGIMBAL2011"

Case No. 2:23-sw-0400 CKD

## APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property *(identify the person or describe the property to be searched and give its location)*:

SEE ATTACHMENT A.

located in the EASTERN District of CALIFORNIA, there is now concealed *(identify the person or describe the property to be seized)*:

SEE ATTACHMENT B.

The basis for the search under Fed. R. Crim. P. 41(c) is *(check one or more)*:

- ☒ evidence of a crime;  
☒ contraband, fruits of crime, or other items illegally possessed;  
☒ property designed for use, intended for use, or used in committing a crime;  
☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

<i>Code Section</i>	<i>Offense Description</i>
18 U.S.C. § 1170	Illegal Trafficking in Native American Human Remains

The application is based on these facts:

See Affidavit of Special Agent Joshua Updegraff

- ☒ Continued on the attached sheet.  
☐ Delayed notice of \_\_\_\_\_ days (give exact ending date if more than 30 days: \_\_\_\_\_) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

/s/

*Applicant's signature*

Joshua Updegraff, BLM Special Agent

*Printed name and title*

Sworn to before me telephonically.

Date: April 20, 2023 at 10:43 am

City and state: Sacramento, CA

*Judge's signature*

Hon. Carolyn K. Delaney U.S. Magistrate Judge

*Printed name and title*

**AFFIDAVIT OF BLM SPECIAL AGENT JOSHUA UPDEGRAFF**

I, Special Agent Joshua Updegraff, being first duly sworn, hereby depose and state as follows:

**I. INTRODUCTION**

1. I make this affidavit in support of an application for a search warrant for information associated with a certain account that is stored at premises owned, maintained, controlled, or operated by eBay, Inc., a web-hosting company, headquartered at 2025 Hamilton Avenue, San Jose, California 95125. The information to be searched is described in the following paragraphs and in Attachment A, hereby incorporated by reference. This affidavit is made in support of an application for a search warrant under 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A) to require eBay, Inc. to disclose to the government copies of the information (including the content of communications) further described in Section I of Attachment B (hereby incorporated by reference). Upon receipt of the information described in Section I of Attachment B, government-authorized persons will review that information to locate the items described in Section II of Attachment B.

**II. AGENT BACKGROUND**

2. I am a Department of the Interior (DOI) Bureau of Land Management (BLM) Special Agent and have been so employed since August 2016. I am a Task Force Agent (TFA) with the Drug Enforcement Administration (DEA) at the Sacramento OCDETF Strike Force and have been a DEA TFA since January 2017. I previously worked at the DEA Imperial County District Office and DEA Salinas Post of Duty before my current duty station. Prior to becoming a Special Agent, I was a Law Enforcement Ranger with the BLM and National Park Service, holding both permanent and seasonal positions since 2003 across the United States. The last position I held as a Law Enforcement Ranger was as the BLM Chief Ranger (Supervisor) in Arcata, California.

3. I tender this affidavit as a BLM Special Agent, where my duties focus on investigating violations of federal laws and regulations related to the use, management, and development of public lands and their resources, including activities related to the administration of public lands whose authority is defined in Title 43 of the United States Code, Section 1733. Certain laws within 16 U.S.C. and 18 U.S.C. can be applied to BLM lands when applicable, such as 16 U.S.C. §§ 470, respectively

known as the Archaeological Resources Protection Act (ARPA), and 18 U.S.C. §§ 1170(a), which addresses the illegal trafficking in Native American remains and funerary objects that are protected by 25 U.S.C. Chapter 32, respectively known as the Native American Graves Protection and Repatriation Act (NAGPRA). While ARPA seeks to protect archaeological resources on public and tribal lands, NAGPRA protects Native American cultural, funerary, and human remains and seeks to repatriate those items back to the tribe who has right of possession. Under 18 U.S.C. §§ 1170(a), there are criminal penalties for those who knowingly sell, purchase, or use for profit, or transports for sale or profit, the human remains of Native Americans without the right of possession as provided in NAGPRA.

4. Within my career I have received training in NAGPRA and ARPA investigation and have been involved in the investigation of “commercial collectors” who illegally obtain protected artifacts through excavation or purchase and then resell them for profit. Part of this process often includes obtaining large collections of artifacts through auction, dividing them into smaller collections or individual artifacts, and then reselling them. As a result, letters of provenance that describe where the items came from, history of ownership, or right of possession are often not included in sales due to items being illegally collected or the artifact’s history being lost during multiple sales. This makes it difficult to determine the exact location where artifacts were excavated.

5. Based upon conversations with archaeological and cultural experts, I know that the Plains Miwok Native American tribe (hereinafter “Miwok”) inhabited the Mokelumne River watershed (which includes parts of Alpine, Amador, Calaveras, San Joaquin, and Sacramento Counties) for thousands of years and were first contacted around in the late 17<sup>th</sup> century by European settlers, who named the Mokelumne River based on their interpretation of the Miwok language for “river” (mokul) and “people of” (umne). Within the Mokelumne River watershed the Miwok dwelled in cedar bark teepees and, in colder months, semi-subterranean “pit” houses within communities modernly referenced as “occupational areas”. These occupational areas are quantified as the land influenced by Miwok inhabitation consisting of middens (trash pits), ceremonial/religious sites, dwellings, and funerary locations where they would cremate and bury their dead. Archaeologists and cultural experts familiar with Miwok occupational areas found these sites have a cultural impact zone of roughly twelve miles in any direction of Miwok activity since Miwok settlements were fairly spread out.

6. The facts set forth in this affidavit are based on my personal knowledge, and on information I have received from other law enforcement personnel and from persons with knowledge regarding the relevant facts, as well as documents I have reviewed. Because this affidavit is intended to show only that there is sufficient probable cause for the requested warrant, it does not set forth all my knowledge of or investigation into this matter. Unless specifically indicated otherwise, all conversations and statements described in this affidavit are related in substance and part only, and all dates set forth below are approximate.

7. Based on my training and experience and the facts set forth in this affidavit, there is probable cause to believe that eBay account “RODREGIMBAL2011” (hereinafter **TARGET ACCOUNT**) has committed violations of 18 U.S.C. § 1170(a), Illegal Trafficking in Native American Human Remains (hereinafter “Subject Offense”). There is also probable cause to search the information described in Attachment A for evidence and instrumentalities of the crime as further described in Attachment B.

### **III. JURISDICTION**

8. This Court has jurisdiction to issue the requested warrant because it is “a court of competent jurisdiction” as defined by 18 U.S.C. § 2711. 18 U.S.C. §§ 2703(a), (b)(1)(A) & (c)(1)(A). Specifically, the Court is “a district court of the United States . . . that – has jurisdiction over the offense being investigated.” 18 U.S.C. § 2711(3)(A)(i).

### **IV. BACKGROUND**

#### **A. eBay<sup>1</sup>**

9. eBay Inc. (“eBay”) is an online auction consumer-to-consumer corporation,

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<sup>1</sup> The information in this section is based on my experience and information published by eBay on its public website under the “Customer Service” section and its various subparts, including but not necessarily limited to, the following webpages: <https://www.ebay.com/help/account/signing-ebay-account/signing-ebay-account?id=4191&st=7>; <https://www.ebay.com/help/buying/paying-items/buying-guest?id=4035&st=7>; <https://www.ebay.com/help/account/changing-account-settings/changing-username?id=4198>; <https://www.ebay.com/help/account/messages/messages?id=4194>; and <https://www.ebay.com/help/account/messages/messages?id=4194&st=3&pos=2&query=Messages&intent=messaging&lucenceai=lucenceai&docId=HELP1103>. Information was also obtained from eBay sellers can no longer use PayPal under new terms *available at* <https://www.bbc.com/news/technology-57318294>.

headquartered in San Jose, California. The company manages eBay.com, an online auction and shopping website in which people and businesses buy and sell a broad variety of goods and services worldwide.

10. eBay is considered an electronic communications service (“ECS”) provider because it provides its users access to electronic communications service as defined in Title 18, United States Code, Section 2510(15). eBay users have access to these electronic communication services, also known as “member to member” communications, by registering an account with eBay. eBay requests subscribers to provide basic information, such as name, gender, zip code and other personal/biographical information.

11. eBay maintains electronic records pertaining to the individuals and companies for which they maintain user accounts. These records include account access information, e-mail transaction information, and account application information.

12. eBay can be accessed on servers operated, controlled, maintained, or owned by eBay from any computer connected to the Internet located anywhere in the world.

13. To register as a seller on eBay, an individual must provide eBay with their full name, address, date of birth, and Social Security Number. If a seller’s identity cannot be confirmed using this information, eBay may require additional information including a photo identification. Until June 2021, sellers could direct payments for items sold on eBay to their linked PayPal account. However, as of June 2021, all payments are issued by eBay directly to the seller’s bank account. As of June 2021, an eBay seller has been required to link a checking account. eBay verifies the seller’s banking details by providing the name on the checking account, bank name, and routing and account number. eBay issues a Form 1099-K to U.S. sellers who have received income from online sales over the minimum threshold set by the IRS.

14. eBay users also select a unique username or user ID at the time of account creation. This is the name other eBay members see. The user ID can be changed, and all account information is transferred to the new username.

15. eBay stores all messages a member exchanges with other eBay members, as well as any emails from eBay in eBay Messages. Messages are sent to the member’s eBay Messages inbox and

their personal email address. A non-member can also typically contact a seller. All these messages are stored in the subscriber's "mailbox" on eBay's servers until the subscriber deletes the e-mail or the subscriber's mailbox exceeds the preset storage limits.

16. When the subscriber sends a "member to member" e-mail, it is initiated at the user's computer, transferred via the Internet to eBay's servers, and then transmitted to its end destination. eBay users have the option of saving a copy of the e-mail sent.

17. An eBay subscriber can store files, including e-mails and image files, on servers operated, controlled, maintained, or owned by eBay.

**B. Applicable Law**

18. Title 18, United States Code, Section 1170 provides, in relevant part, that whoever knowingly sells, purchases, uses for profit, or transports for sale or profit, the human remains of a Native American without the right of possession to those remains as provided in the Native American Graves Protection and Repatriation Act shall be fined in accordance with this title, or imprisoned not more than 1 year and 1 day, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, or imprisoned not more than 10 years, or both.

**V. PROBABLE CAUSE**

19. On January 24, 2023, the BLM was notified of an eBay listing for "Primitive Miwok Indian Artifacts Large Collection Bones Pottery Chards Plus" (hereinafter "Artifact Collection") listed by the **TARGET ACCOUNT**. The initial report was received by the Eastern District of California United States Attorney's Office (USAO) from the Wilton Rancheria, a federally recognized Native American Tribe, as listed in the Federal Register, Vol. 74, No. 132, who are descendants of the Miwok. Photos of the Artifact Collection on eBay appeared to show pieces of bone, antler, and pottery chards contained within a King Edward cigar box. Affixed to the cigar box in one of the photos was a handwritten note that read "Box Miwok Indian Tribe Burial Pieces Mokelumne River, California". Some of the photographs showed the wrinkled and weathered hand of an elderly white male holding the Artifact Collection. Information displayed on eBay showed the **TARGET ACCOUNT** owner as "Rod REGIMBAL 2011" with a sales history of 25,000 items and a shipping point of origin of Yucaipa, California. A large portion of the items listed on the **TARGET ACCOUNT** sales page are Native

American artifacts. A law enforcement database search for “Rod REGIMBAL” of Yucaipa, California revealed Rodney James REGIMBAL, 76 years old, with an address of 31462 Yucaipa Blvd, Unit 7, Yucaipa, California (hereinafter “Target Residence”).

20. On February 8, 2023, the Artifact Collection was purchased by Special Agent Joshua Updegraff using an undercover (“UC”) eBay account for \$299.99, \$324.74 with shipping. SA Updegraff was subsequently provided a United States Postal Service (USPS) tracking number from the **TARGET ACCOUNT** with tracking information that showed the point of origin as Yucaipa, California.

21. On February 13, 2023, SA Updegraff received a sealed USPS box containing the Artifact Collection from United States Postal Inspection Service (USPIS) Inspector Jeanne-Marie Martin at the USPS West Sacramento facility. SA Updegraff noted the shipping label for the box had a return address of “Rodney Regimbal 31462 Yucaipa Bluv [sic] #7 Yucaipa CA 92399-1654” (Target Residence). SA Updegraff transported the USPS box to the BLM office in El Dorado Hills, California, where he opened the box while wearing gloves. Upon opening the box, SA Updegraff found a typed note saying: “THANK YOU SO MUCH, ROD”, “@ RRREGIMBAL@OUTLOOK.COM”. Underneath the note and balled up newspaper, SA Updegraff found a King Edward cigar box wrapped in cellophane and bubble wrap. SA Updegraff removed the cellophane and bubble wrap and noted the cigar box had a handwritten note affixed to it that read “Box Miwok Indian Tribe Burial Pieces Mokelumne River, California”. Inside the cigar box SA Updegraff observed a mollusk shell, a piece of antler, pieces of bone, and potential pieces of pottery chards, which matched the photos listed on the sales page of the **TARGET ACCOUNT**. SA Updegraff then repackaged the Artifact Collection into the USPS box, sealed the box using tape, and entered it into permanent evidence storage.

22. On February 15, 2023, SA Updegraff met with the Wilton Rancheria NAGPRA Manager Cassie Dowdle, NAHC Cultural Resource Analyst Cody Campagne, NAHC Cultural Resource Analyst Andrew Green, and NAHC Executive Secretary Raymond Hitchcock (hereinafter collectively referenced as “Cultural Specialists”). The purpose of the meeting was to compare confidentially held maps owned by NAHC and the Wilton Rancheria that showed Miwok excavation sites along the Mokelumne River to BLM land status maps. Of the fifteen excavation sites reviewed that would contain funerary items, 13 were either on BLM land or had an occupational site area that would cross onto BLM



land. As a result, the consensus of the Cultural Specialists was that Miwok funerary items excavated near the Mokelumne River were likely taken from BLM land.

23. On February 21, 2023, SA Updegraff met with BLM Archaeologist Anne-Sheree Brown, Wilton Rancheria Cultural Educator Anthony Wilson, and Sacramento State University (SSU) NAGPRA Assistant Tya Ates (hereinafter collectively referenced as “NAGPRA Specialists”). The purpose of the meeting was to examine the Artifact Collection to determine their authenticity and cultural significance. Upon examination, NAGPRA Specialists identified as least two large pieces of human bone from the temporal and occipital regions of the skull and one possible, smaller piece. The NAGPRA Specialists also identified the remaining contents of the Artifact Collection (antler, turtle shell, fired clay, worked stone, and projectiles) as Miwok funerary items with substantial cultural significance. Once the Artifact Collection was photographed, measured, and catalogued, the items were placed back in the USPS box, sealed, and entered back into permanent evidence storage.

24. I submit there is probable cause to believe evidence of the Subject Offense is stored on eBays servers for at least the following reasons:

- a) In my training and experience, eBay buyers may communicate with a seller prior to bidding and/or buying an item off eBay or may contact a seller after an item has been purchased. eBay provides buyers a “Contact Seller” option to communicate with the seller via the eBay platform. Sellers will commonly receive a notification in their inbox with an option of receiving notifications to their designated email address, if selected. Buyers are known to use the eBay platform to ask the seller various questions about the item offered for sale, for example, how the seller came into contact with the item being sold; questions about the original value or cost of the item, or about authenticity or history of the item being sold; and questions about the condition of the item. Buyers may also use the eBay platform to contact the seller about an item that has been purchased and received.
- b) As explained herein, information stored in connection with the eBay account may provide crucial evidence of the “who, what, why, when, where, and how” of the criminal conduct under investigation, thus enabling the United States to establish and



prove each element or alternatively, to exclude the innocent from further suspicion. In my training and experience, the information stored in connection with the eBay account can indicate who has used or controlled the account. This “user attribution” evidence is analogous to the search for “indicia of occupancy” while executing a search warrant at a residence. For example, message communications and images sent (and the data associated with the foregoing, such as date and time) may indicate who used or controlled the account at a relevant time. Stored electronic data, such as communications, may provide relevant insight into the eBay subscriber’s state of mind as it relates to the offenses under investigation. For example, information in the message may indicate the owner’s knowledge, motive, and intent to commit a crime (e.g., communications relating to the crime), or consciousness of guilt (e.g., deleting communications to conceal them from law enforcement). I also know that users may communicate directly with eBay to report problems or concerns about a buyer, seller, or a particular transaction, and that eBay may be in direct communication with buyers or sellers about such issues. Finally, information maintained by eBay can show how and when the messages for the account were sent or received. For example, as described below, the provider typically logs the Internet Protocol (IP) addresses from which users access the account along with the time and date of that access. By determining the physical location associated with the logged IP addresses, investigators can understand the chronological and geographic context of the account access and use relating to the crime under investigation. This geographic and timeline information may tend to either inculcate or exculpate the account owner. Additionally, information stored in the user’s account may further indicate the geographic location of the account user at a particular time (e.g., location information integrated into an image or video sent via message).

## **VI. CONCLUSION**

25. Pursuant to 18 U.S.C. § 2703(g), the presence of a law enforcement officer is not required for the service or execution of this warrant. The government will execute this warrant by

serving the warrant on eBay, Inc. Based on the forgoing, I request that the Court issue the proposed search warrant. Because the warrant will be served on eBay, Inc. who will then compile the requested records at a time convenient to it, reasonable cause exists to permit the execution of the requested warrant at any time in the day or night.

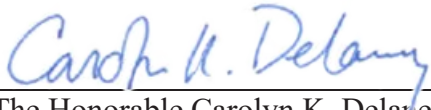
Respectfully submitted,

/s/

Special Agent Joshua Updegraff  
Special Agent  
Bureau of Land Management

Subscribed and sworn to be me  
telephonically on:

April 20, 2023



The Honorable Carolyn K. Delaney  
UNITED STATES MAGISTRATE JUDGE



Approved as to form by AUSA Justin L. Lee

**ATTACHMENT A**

**Property to Be Searched**

This warrant applies to information associated with eBay Account “RODREGIMBAL2011” (TARGET ACCOUNT) that is stored at premises owned, maintained, controlled, or operated by eBay, Inc., a company headquartered at 2025 Hamilton Avenue, San Jose, CA 95125.

**ATTACHMENT B**

**Particular Things to be Seized**

**I. Information to be disclosed by eBay, Inc. (the “Provider”)**

To the extent that the information described in Attachment A is within the possession, custody, or control of the Provider, regardless of whether such information is located within or outside of the United States, and including any emails, records, files, logs, or information that has been deleted but is still available to the Provider, or has been preserved pursuant to a request made under 18 U.S.C. § 2703(f) on January 24, 2023, the Provider is required to disclose the following information to the government for the SUBJECT ACCOUNT listed in Attachment A for the time period November 16, 2011, and April 1, 2023:

- A. Full eBay contact details, including billing and shipping addresses.
- B. Current and former registered email addresses and user ID’s with date/time stamps.
- C. eBay IP addresses at registration and at time of listing or bidding.
- D. Credit card and/or checking account information added to eBay account.
- E. All Selling and/or buying history.
- F. The contents of all messages or communications associated with the SUBJECT ACCOUNT, including, stored or preserved copies sent to and from the SUBJECT ACCOUNT and drafts.
- G. All information related to any message or communication identified above, including but not limited to:
  - 1. The date and time of each message.
  - 2. The source and destination addresses associated with each communication.
  - 3. All IP addresses used by the SUBJECT ACCOUNT to send, receive, or read each such message or communication.

4. All information identifying the eBay auction or sale to which each such message or communication is associated. For example, Auction Start Date, Item ID, Auction ID, and eBay auction title.
- H. All records pertaining to communications between the Provider and any person regarding the SUBJECT ACCOUNT, including contacts with support services and records of actions taken.

Pursuant to 18 U.S.C. § 2703(d), the service provider is hereby ordered to disclose the above information to the government within 14 days of the signing of this warrant.

## **II. Information to be seized by the government**

All information described above in Section I that constitutes evidence and instrumentalities concerning violations of 18 U.S.C. § 1170(a) (Illegal Trafficking in Native American Human Remains), hereinafter “Subject Offense”, involving the SUBJECT ACCOUNT occurring between November 16, 2011, and April 1, 2023, including, for the account listed on Attachment A, information pertaining to the following matters:

1. All messages, communications, or information associated with the SUBJECT ACCOUNT related to the sale of “Indian,” “Native American,” “Miwok,” “burial”, or “funerary” items.
2. All information related to the identity and location of the user of the SUBJECT ACCOUNT.

UNITED STATES DISTRICT COURT

for the  
Eastern District of California

In the Matter of the Search of  
(Briefly describe the property to be searched  
or identify the person by name and address)

eBay Account "RODREGIMBAL2011"

Case No. 2:23-sw-0400 CKD

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the EASTERN District of CALIFORNIA  
(identify the person or describe the property to be searched and give its location):

SEE ATTACHMENT A.

The person or property to be searched, described above, is believed to conceal (identify the person or describe the property to be seized):

SEE ATTACHMENT B.

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property.

**YOU ARE COMMANDED** to execute this warrant on or before May 4, 2023

(not to exceed 14 days)

☐ in the daytime 6:00 a.m. to 10 p.m. ☒ at any time in the day or night as I find reasonable cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

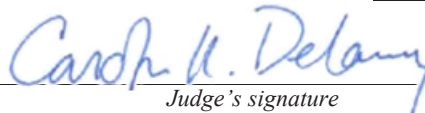
The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to United States Magistrate Judge any duty magistrate judge

(name)

☐ I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized (check the appropriate box) ☐ for        days (not to exceed 30).

☐ until, the facts justifying, the later specific date of                                     .

Date and time issued: April 20, 2023 at 10:43 am

  
Judge's signature

City and state: Sacramento, CA

Hon. Carolyn K. Delaney U.S. Magistrate Judge

Printed name and title

**Return**

Case No.:

Date and time warrant executed:

Copy of warrant and inventory left with:

Inventory made in the presence of :

<b>Certification</b>
----------------------

I declare under penalty of perjury that this inventory is correct and was returned along with the original warrant to the designated judge.

Date: \_\_\_\_\_

---

*Executing officer's signature*

---

*Printed name and title*

Subscribed, sworn to, and returned before me this date.

---

*Signature of Judge*

Date +

